S.B. Civil Revision Petition No.526/2006

Banshilal.
vs.
Rampal.

Date : 3.1.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr. Manish Pitalia, for the petitioner.

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Heard learned counsel for the petitioner.

The petitioner is aggrieved against the order dated 30.3.2005 by which the trial court dismissed the petitioner's application filed in decided execution case no.12/2002 and against the order dated 21.2.2005 by which the executing court dismissed the petitioner's execution petition in full and final satisfaction.

It appears that on 21.2.2005, the executing court after obtaining the report from the concerned clerk, calculated the due interest amount of the decree holder and passed the order of payment to the decree holder as per said calculation and dismissed the execution petition in full satisfaction. After dismissal of the execution petition, the petitioner moved application for more relief as according to the petitioner, the amount of interest was wrongly calculated by the clerk

concerned. The said application was taken up by the executing court on 30.3.2005 and nobody appeared on behalf of the decree holder. The executing court again after observing that the interest was calculated by the concerned clerk and order has been passed by the Court on 21.2.2005, therefore, the amount may be paid to the decree holder as per the calculation.

Learned counsel for the petitioner submits that in fact, the total amount of interest was Rs.37,935/- upto 21.2.2005, the date when the sale was confirmed, but the clerk concerned has calculated the wrong amount. It is also submitted that the petitioner moved application for recalling of the order dated 21.2.2005 and after dismissal of the said application by the executing court vide order dated 30.3.2005, the petitioner has challenged these two orders by filing this one revision petition.

I considered the submissions of learned counsel for the petitioner and perused the orders passed by the executing court dated 21.2.2005 and 30.3.2005.

The petitioner cannot challenge two orders by filing one revision petition. However, it appears that on 21.2.2005, no objection was raised by the decree holder on dismissal of the execution petition in full

satisfaction on the basis of interest calculated by the court. Even on 30.3.2005, nobody appeared on behalf of the decree holder and the executing court instead of dismissing the execution petition in default, looked into the record and observed that the Court itself has calculated the interest amount and dismissed the execution petition in full satisfaction. Since no objection was raised by the decree holder before the executing court about wrong calculation of interest and the decree holder did not press the relief before the executing court even in second time, therefore, I do not find any illegality in the impugned orders. No ground is made out for interference of this Court under Section 115 CPC in such matter.

Accordingly, this revision petition, having no merits, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya